

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CIVIL REFERENCE NO. 1 OF 2022

*(Originating from the District Court of Momba at Chapwa in Misc. Civil Application
No. 17 of 2021 in Original Civil Case No. 2 of 2016)*

VADEEN TANZANIA CO. LTD APPLICANT

VERSUS

TUNDUMA TOWN COUNCILRESPONDENT

RULING

Date of last order: 22nd August, 2022

Date of judgment: 30th August, 2022

NGUNYALE, J.

This ruling emanates from the issue which was forwarded to this court by Hon. Timoth Lyon Resident Magistrate at Momba District Court for consideration. The title of the parties has been designed by the court as per records of the records of Misc. Civil Application No. 17 of 2021.

What transpired before the trial court is to the effect that in the District Court of Momba, Z. A Mpangule was assigned to preside over the trial. He recorded the entire evidence of the prosecution and the defence and set a judgment to be delivered on 25/11/2019. The record is silence whether

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the judgment was read on that date or not but there is typed judgment in the record. During execution proceedings the court was confronted with judgment not signed and dated by predecessor magistrate who had trial of the case but signed and dated by successor magistrate from whom there is no record how the file got into her hands. He referred the matter to this court for necessary measures.

This court opened this proceedings and summoned parties to comment on the issue whether the judgment dated 25/11/2019 is signed and dated by a predecessor magistrate.

Mr. Lucas Luvanda learned advocate represented the applicant whereas Mr. Tibaijuka learned State Attorney appeared for the respondent. Both parties were in agreement that the sported irregularity was fatal and prayed judgment and proceedings to be nullified. As for the way forward the pressed for retrial.

I have considered the argument of both parties, the starting point in canvassing the issue is Order XX rule 3 of the Civil Procedure Code [Cap 33 R: E 2022] henceforth CPC which provides;

The judgment shall be written by, or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall be dated and signed by such presiding judge or magistrate as of the date on which it is pronounced in open court

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and, when once signed, shall not afterwards be altered or added to, save as provided by section 96 or on review.

From the above the judgment has to be written in a language of the court, contain points for determination, the decision and reasons for the decision and more importantly, the said judgement must be dated and signed. The purpose of the requirement of showing the date and appending a signature in the judgment is not far-fetched. It is meant to signify its authenticity by the person who authored it.

The law under rule 2 of Order XX of the CPC permits judgment composed by a predecessor magistrate or judge to be pronounced by a successor magistrate.

The requirement of judgment being signed and dated by the predecessor magistrate is not virgin in this country. In the case of **Patrick Boniface v Republic**, Criminal Appeal No. 2 of 2017 the court stated;

In the case at hand, it is evident that the successor magistrate signed and dated the judgment which was tantamount to composing the judgment without recording any explanation as to why she took over the matter from the predecessor magistrate. In this regard, she lacked authority to do so.

Although the above principle was pronounced in criminal case but the principle is well applicable in civil litigation because the law on the requirement to sign and date judgment by predecessor magistrate or judge is the same. See the case of **M/S Flycatcher Safaris Ltd v Hon.**



Minister for Lands and Human Settlements Development & Another, Civil Appeal No. 142 of 2017.

In this matter records indicates that on 30/10/2019 after defence closed its case the matter was scheduled on 25/11/2019 for judgment. From there no proceedings showing that judgment was pronounced on the set date and if it was pronounced by a predecessor magistrate or his successor. Although, there is typed judgment in the file but it is not signed. At the end of it shows that it was signed by Rupia RM on 29/11/2019. There is no explanation for the later to sign the judgment.

From the authority of the case of **Patrice Bopniface** (supra) the failure by Mpangule RM to sign and date the judgment he authored offended the mandatory requirements of Order XX rule 3 of the CPC which renders the purported judgment a nullity which cannot be remedied by the signature and date of the successor magistrate who had no authority to assume jurisdiction.

As for the way forward both parties were for retrial. Similar scenario was discussed in the case of **Duma Ilindilo Pangarasi v Republic**, Criminal Appeal No. 470 of 2019. In this case judgment was neither dated or signed by the predecessor. The court made reference to Kenyan case of **Likhanga Shikami and Another v Uliana Ingasiali Regina**, Civil Appeal No. 28 of 2007 and **Ferdinand Indangasi Musee and**



Another v Republic, Criminal Appeal Nos. 370 & 372 of 2010 which discussed the input of Order XX rule 2(2) of the Civil Procedure Rules which is in *pari materia* with Order XX rule 3 of the Civil Procedure Code, [Cap 33 R.E. 2022] and held that;

we find that failure to sign and date the judgment was a fatal omission which is not curable under section 388 of the CPA. It renders the said judgment a nullity.

In this case, as we hinted earlier on, the predecessor magistrate heard the prosecution and defence evidence and at the end he fixed the date of judgment to be on 25 November, 2019. However, record is silence as to whether judgment was read on that date, although in the file there is impugned judgment.

From the above this court differs with counsels for the parties who went for retrial, it follows that only the judgment is a nullity and proceedings remain intact. Therefore, the court order that the matter be remitted to District Court of Momba to enable Z. A. Mpangule SRM to compose judgment in accordance with the law. It is so ordered.

DATED at MBEYA this 30th day of August, 2022




D.P. Ngunyale
Judge